

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

February 24, 2011

- I. **CALL TO ORDER** – The meeting was called to order at 1:31 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Carla Blanton; Patrick Brewer; Marie Copeland; Mike Cravens, Vice-Chair; Ed Holmes; Mike Owens; Derek Paulsen (left at 2:54 p.m.); and Bill Wilson. Absent were Eunice Beatty, Carolyn Richardson, and Lynn Roche-Phillips.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Chrisd Taylor; and Stephanie Cunningham. Other staff members present were Rochelle Boland, Department of Law; Captain Charles Bowen and Firefighter Allen Case, Division of Fire and Emergency Services; Hillard Newman, Division of Engineering; and Bob Carpenter, Division of Building Inspection.

- II. **APPROVAL OF MINUTES** – None at this time.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **IOTA NU HOUSE CORPORATION OF ALPHA PHI INTERNATIONAL FRATERNITY, INC. (AMD.), ZONING MAP AMENDMENT & LYNTHURST PLACE BLOCK C, LOTS 4 & 5 ZONING DEVELOPMENT PLAN**

- a. MARC 2010-14: IOTA NU HOUSE CORPORATION OF ALPHA PHI INTERNATIONAL FRATERNITY, INC. (AMD.) (2/24/11)* - amended petition for a zone map amendment from a High Density Apartment (R-4) zone to a High Rise Apartment (R-5) zone, for 0.45 net (0.53 gross) acre, for property located at 253, 255 & 261 East Maxwell Street. A conditional use permit has also been requested in conjunction with this zone change.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 1) recommends Downtown Master Plan (DTMP) future land use for the subject property. The petitioner proposes the rezoning in order to construct a sorority house, which is a conditional use in the High Rise Apartment (R-5) zone.

The Zoning Committee Recommended: **Disapproval of the rezoning request**, for the reasons provided by staff on December 2, 2010.

The Staff Recommends: **Disapproval**, for the following reasons:

1. The requested High Rise Apartment (R-5) zone is not in agreement with the 2007 Comprehensive Plan, for the following reasons:
 - a. The subject property is recommended for Downtown Master Plan (DTMP) land use. The 2007 Comprehensive Plan states that the Planning Commission should consider the recommendations of the 2001 Comprehensive Plan as well as other relevant current information to guide redevelopment decisions. The land use recommendation, carried forward from the 2001 Plan, is for High Density Residential, defined as up to 25 dwelling units per net acre. The proposed sorority house would have an equivalent density of 26.6 dwelling units per acre (with 49 occupants).
 - b. The DTMP further recommends for the College Town precinct that alterations and demolitions to existing buildings be minimized. The applicant's proposal is to demolish all three existing residential dwellings; but none of these structures has a history of Code Enforcement violations, nor do these properties appear to be in a state of disrepair.
 - c. The DTMP further recommends for the College Town precinct that, "Important to the successful development of the area is the retention of old and historic buildings and the development of housing and retail space that not only increases density, but also responds to the surrounding architectural character." The proposed structure would be out of scale with the existing surrounding buildings within this block face, and would be out of character with the area. The proposed building, with a primary wall façade of over 100 feet in length, will be the largest building in this otherwise intact residential block. The size of the building will be more than double that of any of the other buildings, and will comprise nearly 1/3 of the entire block front.
2. The existing R-4 zoning is appropriate, and the proposed R-5 zoning is inappropriate, for the subject properties because:
 - a. The properties are completely surrounded by existing R-4 zoning.
 - b. The existing duplexes and 4-plex on these three properties yield a residential density of 17.7 dwelling units per acre, as recommended by the Land Use Element of the 2001 and 2007 Comprehensive Plans.
 - c. Approval of the R-5 zoning encourages the demolition of the existing residential structures on 253, 255, & 261 E. Maxwell Street, which is in disagreement with the DTMP. Retention of the existing buildings would further the recommendations of the DTMP.
3. There has not been a major unanticipated change of an economic, physical, or social nature within the area involved that was not anticipated by the Comprehensive Plan and that might have changed the basic character of the area.

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b. REQUESTED CONDITIONAL USE

REQUESTED CONDITIONAL USE

1. Sorority House

The Staff Recommends: **Approval of the requested conditional use permit**, for the following reasons:

- a. Should the subject property be rezoned to R-5, granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Historically, sorority houses have not been perceived as inherently noisy or otherwise disturbing as fraternity houses, with the possible exception of their "rush week" parties for membership recruitment (held every August). A sorority house at this location would be compatible with the long-standing sorority located on the opposite side of East Maxwell Street, with the fraternity house located on the corner of Stone Avenue, and with the buildings across the street on the UK campus.
- b. The amount of off-street parking is no longer proposed to be less than the minimum requirement for the requested conditional use; but, more realistically, it is still insufficient for a 49-resident sorority house. Since off-street parking in this neighborhood is very limited, it is important to recognize that on-street parking is available on evenings and weekends directly across East Maxwell Street from this location, and nearby (to the south) in a Permit-parking lot controlled by the University of Kentucky. These two existing conditions should serve to minimize any potential detrimental impact of this use to the surrounding neighborhood.
- c. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property R-5; otherwise, any Commission action of approval is null and void.
 2. The sorority shall be established in accordance with the submitted Zoning Development Plan, or as further amended by the Planning Commission.
 3. All necessary permits shall be obtained from the Division of Building Inspection prior to any demolition and construction, and prior to occupancy of the building.
 4. The design of the proposed parking lot, including the two proposed access points, shall be subject to review and approval by the Division of Traffic Engineering.
 5. The off-street parking lot shall be paved, with spaces delineated, and landscaped in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
 6. Any outdoor pole lighting shall be of a design where light is shielded from adjoining properties, and/or directed downward in a fashion that will minimize any disturbances from adjoining dwellings to the north, east and west. Such lighting shall have a maximum height of 12'.
 7. The sorority house shall provide no more than 50 beds for university students at this facility.
 8. Any members driving to this sorority during meetings and/or social events shall be encouraged to park their vehicles on East Maxwell Street, or in university-controlled parking areas to the south and west of this site. Copies of these written instructions shall be provided to the Division of Building Inspection on an annual basis.
- c. ZDP 2010-80: LYN DHURST PLACE, BLOCK C, LOTS 4 & 5 (2/24/11)* - located at 253, 255 & 261 East Maxwell Street.
(Vision Engineering)

Note: The Planning Commission postponed this plan at its December 17, 2010, and January 27, 2011, meetings.

The Subdivision Committee Recommended: Referral. There were questions regarding the parking layout, landscaping and building code compliance.

The Staff Recommended: Approval, subject to the following requirements:

1. Provided the Urban County Council rezones the property R-5; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm sewers, sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Provided the Planning Commission grants the requested variances.
8. Denote height of proposed building.
9. Denote proposed open space.
10. Denote storm water detention off site.
11. Delete note #8.
12. Denote proposed and/or existing easements.
13. Addition of access drive dimensions.
14. Discuss 48" Pin Oak protection.

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15. Discuss open space compliance.
16. Discuss transit stop parking reduction (300') and parking compliance.

Petitioner Representation: Bruce Simpson, attorney, was present representing the petitioner. He stated that the petitioner is still in the process of searching for an alternate location for the proposed sorority house, and would like to request a two-month postponement of this request in order to continue those efforts.

Action: A motion was made by Mr. Owens, seconded by Mr. Wilson, and carried 8-0 (Beatty, Richardson, and Roche-Phillips absent) to postpone MARC 2010-14 to the April 28, 2011, Planning Commission meeting.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, February 3, 2011, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Marie Copeland, Eunice Beatty and Derek Paulsen. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor, Traci Wade, Barbara Rackers and Denice Bullock, as well as Captain Charles Bowen, and Firefighter Allen Case, Division of Fire & Emergency Services; Rochelle Boland, Law Department and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

A. DISCUSSION ITEMS – Following requests for postponement and withdrawal, the remaining items will be considered.

The procedure for consideration of these remaining plans is as follows:

- Staff Report(s)
- Petitioner's Report(s)
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request
- Rebuttal – (a) petitioner's comments, (b) citizen comments, and (c) staff comments
- Commission discusses and/or votes on the plan

V. ZONING ITEMS - The Zoning Committee met on Thursday, February 3, 2011, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, Ed Holmes, Carolyn Richardson, and William Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

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1. **EQUITY ALLIANCE OF LEXINGTON, LLC, ZONING MAP AMENDMENT & RUTTENBURG & COHEN (LAKEVIEW – WOODSPOINT, UNIT 2), ZONING DEVELOPMENT PLAN**

- a. MAR 2011-3: EQUITY ALLIANCE OF LEXINGTON, LLC (4/3/11)* - petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Neighborhood Business (B-1) zone, for 0.74 net (1.07 gross) acres, for property located at 369 Codell Drive (a portion of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 9A) recommends Retail Trade and Personal Services (RT) for the subject property. The petitioner proposes B-1 zoning in order to re-use the existing structure, which contains approximately 6,400 square feet, as a child care center.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested Neighborhood Business (B-1) zone is in agreement with the 2007 Comprehensive Plan and its recommendation for a Retail Trade and Personal Services (RT) land use for the subject property.
 2. The petitioner's proposed reuse of the existing structure for a child care center is supportive of the desire to enhance neighborhood character and provide essential services closer to where residents live. This activity is in support of Goal 15 of the Goals and Objectives of the 2007 Comprehensive Plan, which calls for the preservation, protection, and enhancement of the character and quality of existing neighborhoods.
 3. This recommendation is made subject to approval and certification of ZDP 2011-12: Ruttenburg & Cohen (Lakeview-Woodspoint, Unit 2), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2011-12: RUTTENBURG & COHEN (LAKEVIEW-WOODSPOINT, UNIT 2) (4/3/11)* - located at 369 Codell Drive. **(Barrett Partners)**

Note: The purpose of this amendment is to change the allowable use.

The Subdivision Committee Recommended: **Approval**, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote location of trees to be planted per canopy requirements.
9. Denote Final Record Plat designation.

Zoning Report: Ms. Wade presented the staff report on this request for rezoning, briefly orienting the Commission to the location of the subject property. She said that much of the property along the west side of Codell Drive is also zoned B-4; most of the remainder of the zoning in the area is B-3, including properties on Woodhill Drive, as well as the Woodhill Shopping Center. On the east side of Codell Drive, most of the property is zoned for residential use, including multi-family dwellings, duplexes, townhomes, and single-family residences.

Ms. Wade stated that the petitioner proposes to use the subject property as a daycare center for up to 100 children. The existing structure on the subject property, which the petitioner proposes to re-use for the daycare center, was formerly a motorcycle sales and repair shop.

Ms. Wade said that the 2007 Comprehensive Plan recommends Retail Trade and Personal Services use for the subject property. That recommendation is shared by the rest of the property between New Circle Road and Codell Drive in this vicinity. The proposed B-1 zone is in agreement with the recommendations of the Comprehensive Plan. In addition, the petitioner contends that the proposed daycare center would enhance the existing neighborhood, with which the staff agreed. The staff also believes that use of the subject property will support Goal 15 of the Comprehensive Plan. Therefore, the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda. Ms. Wade noted that the Zoning Committee also recommended approval of this request.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that there are no physical changes proposed to the existing structure or the parking area. The structure on the subject property is 6,400 square feet in size, with 14 existing parking spaces, as well as an access point to Codell Drive, all of which are proposed to be retained. Mr. Martin noted the location of the large detention basin at the rear of the subject property, which currently serves the adjacent commercial development. The petitioner proposes to construct a 2,500 square-

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foot play area between the building and the detention basin. Mr. Martin stated that the Subdivision Committee recommended approval of this plan, subject to the nine conditions as listed on the agenda.

Petitioner Representation: Tony Barrett, Barrett Partners, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations for the rezoning request and the zoning development plan, and he requested approval. Mr. Barrett submitted into the record of the meeting several sections of the Comprehensive Plan that the petitioner believes would be supported by the proposed rezoning of the subject property to a B-1 zone.

Citizen Comments: There were no citizens present to comment on this request.

Commission Questions: Ms. Copeland stated that it appeared that the detention basin adjacent to the existing building is very deep, and she was concerned about the safety of the children at the daycare center should that basin become filled with water. She asked if the state licensing board for daycare centers would take that into consideration as part of the licensing process. Mr. Sallee replied that the State board will inspect the site, and they will have to issue their approval in order for the facility to obtain a license. He added that that board will inspect all of the areas inside and outside the building as part of their normal review process. Ms. Copeland said that it could be dangerous if the fence around the detention basin gave way, and asked if that would be inspected. Mr. Sallee responded that he believed that the State Board ordinarily would inspect the condition of the fence as well.

Zoning Action: A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 8-0 (Beatty, Richardson, and Roche-Phillips absent) to approve MAR 2011-3, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 8-0 (Beatty, Richardson, and Roche-Phillips absent) to approve ZDP 2011-12, subject to the nine conditions as listed on the agenda.

2. W. NELSON McMAKIN ZONING MAP AMENDMENT & VILEY HEIGHTS SUBDIVISION, UNIT 3-C, BLOCK C, LOT 1

- a. MAR 2011-4: W. NELSON McMAKIN (4/3/11)* - petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.594 net (0.829 gross) acre, for property located at 1389 Alexandria Drive.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Professional Services (PS) land use for the subject property. The petitioner proposes to rezone the property in order to broaden the allowable uses to include retail and other commercial businesses to serve the surrounding neighborhood.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The existing Professional Office (P-1) zoning is no longer appropriate and the proposed Neighborhood Business (B-1) zoning is appropriate at this location for the following reasons:
 - a. A mixture of small retail uses and small offices on the subject property and in the immediate area would serve the adjacent residential neighborhood well, including several apartment complexes that are within walking distance of the subject property.
 - b. Granting the zone change will not change the appearance or size of the building on the subject property, and since the building is located within a FEMA Special Flood Hazard Area, redevelopment options for the subject site are limited.
 - c. The Gardenside Tributary of Wolf Run Creek and the dense vegetation along its banks to the north of the subject property provide an appropriate landscape buffer from the proposed neighborhood business uses to the high-density apartments further to the north.
 - d. The subject property is located near an existing concentration of high-density residential uses; thus, the likely mixture of offices and businesses located within the building will be walkable to area residents and could provide employment opportunities and additional services to the neighborhood.
 - e. The proposed B-1 zone is consistent with the existing zoning at the other three corners of the Alexandria Drive and Devonport Drive intersection, and would result in all four corners of the intersection having the same zoning designation.
2. The requested zone change is consistent with the 2007 Comprehensive Plan's Goals and Objectives, particularly the objectives which call for greater flexibility within commercial and office areas (Goal 11, Objective L); establishment of retail uses with a neighborhood focus and character (Goal 15, Objective F); providing employment opportunities and essential services closer to residents (Goal 13, Objective K and Goal 15, Objective F); and encouraging alternative modes of transportation, such as walking and biking (Goal 15, Objective K and Goal 19, Objective J).

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3. This recommendation is made subject to approval and certification of ZDP 2011-13: Viley Heights Subdivision, Unit 3, Block C, Lot 1, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be restricted on the subject property via conditional zoning:

PROHIBITED USES:

- a. Restaurants, cocktail lounges and nightclubs.
- b. Itinerant merchants and outdoor sales activities.
- c. Temporary structures.

This restriction is appropriate and necessary for the subject property in order to ensure compatible development, and to limit commercial transient activity near residential neighborhoods.

- b. ZDP 2011-13: VILEY HEIGHTS SUBDIVISION, UNIT 3, BLK C, LOT 1 (4/3/11)* - located at 1389 Alexandria Drive.
(Midwest Engineering)

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection.
10. Delete notes #14 & 15.
11. Pedestrian Planner's approval of parking lot crosswalks.
12. Correct pavement limits near existing dumpster.
13. Denote location of trees to be planted to meet tree canopy requirements.
14. Discuss landscape areas along Devonport Drive.

Zoning Presentation: Ms. Wade presented the staff's zoning report, briefly orienting the Commission to the location of the subject property at the northwest corner of Alexandria Drive and Devonport Drive. She said that the subject property is adjacent to properties zoned P-1 to the west; several B-1 parcels to the east and south; and R-4 zoned properties to the north. The subject property is 0.6 acre in size, and has frontage on both Alexandria Drive and Devonport Drive. The property is bounded to the north by the Gardenside Tributary of Wolf Run Creek, which acts as a buffer between the commercial uses and the residential properties in this area. Ms. Wade displayed several photographs of the subject property and surrounding area, noting that there is an existing 7,200 square-foot structure on the site. The subject property is almost entirely paved, and is mostly located within a FEMA floodplain. Ms. Wade also noted the existing pole signs that serve the business uses in the B-1 zone adjacent to the subject property, since there had been some questions about those signs at the Zoning Committee meeting three weeks ago.

Ms. Wade stated that the 2007 Comprehensive Plan recommended Professional Services use for the subject property, and that the existing P-1 zone is in agreement with the Plan. The requested B-1 zone is not considered by the staff to be in agreement with the Plan. Therefore, the Planning Commission must consider whether there has been a physical, economic, or social change in the immediate area that was not anticipated by the Comprehensive Plan, or if the existing zoning is inappropriate and the proposed zoning is appropriate. In this case, the petitioner contends that the proposed B-1 zoning is more appropriate, due in part to the recent location of several other B-1 uses in the immediate vicinity, which have helped to create a more walkable neighborhood. The petitioner also cites the pedestrian connections to the high-density residential use to the north, and the possibility of providing more employment opportunities in close proximity to the residences. In addition, the petitioner contends that the proposed B-1 zoning would support the Comprehensive Plan Goals and Objectives with regard to creating more flexibility for commercial and office areas; establishing retail within close proximity to the neighborhood; and encouraging alternative modes of transportation. The staff is in agreement that the proposed B-1 zoning is more appropriate at this location, but they noted the presence of some problematic outdoor sales uses with temporary structures located in the area directly across Alexandria Drive, which the Code of Ordinances defines as "itinerant merchants." For that reason, the staff suggested a conditional zoning restriction to prohibit some uses on the subject property, which are listed in the staff report and on the agenda. Following the Zoning Committee meeting three weeks ago, the staff drafted the following revised recommendation:

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Ms. Wade reported that the staff was now proposing the additional restriction on signage based on the Zoning Committee's concerns about allowing additional pole signs in vicinity of the subject property. Ms. Wade noted that, in the proposed B-1 zone, the petitioner would be allowed two freestanding signs that could be 25 feet in height. There are several of those signs along Alexandria Drive on the south side of Devonport Drive, but no such signs on the north side of Devonport Drive. The proposed conditional zoning restriction would limit any signage on the subject property to 40 square feet in size and 10 feet in height, and would require that any such sign be set back 10 feet from the property line. Since the subject property is almost completely paved, it would be difficult to install any pole signs there, as the proposed 10-foot setback would result in the sign being located in a drive aisle. Ms. Wade stated that the staff is recommending approval of this request, with the proposed conditional zoning restrictions.

Commission Questions: Mr. Owens referenced the case review portion of the staff report, which notes that the property directly across Alexandria Drive from the subject property was rezoned by the Council from P-1 to B-1. He said that the staff report states that, "In fact, no new occupancy permits have been issued by the Division of Building Inspection since that time, which would normally document a change in use of a property." He asked if any B-1 uses had located on that property since the time of that rezoning. Ms. Wade answered that the flea market and retail sales, which are depicted in the photographs she displayed during her presentation, are B-1 uses. At the time of that rezoning, however, the staff recommended disapproval; the Planning Commission also recommended disapproval to the Urban County Council, but the Council decided to rezone the property to B-1. Typically, the owner of the property would bring a development plan back to the Commission for approval following a rezoning; but, because of the staff's recommendation of disapproval on the zone change, the development plan was indefinitely postponed. Since that development plan was never approved, it was never certified. Therefore, the Division of Building Inspection has informed the owner of the property that no certificates of occupancy could be issued without a certified development plan. It could be assumed that any uses currently occupying that site are doing so without an occupancy permit. Mr. Owens asked if there was anything that could be done to remedy that situation. Mr. Saltee answered that the staff could re-docket the development plan.

Mr. Owens asked how businesses could be operating on the site without occupancy permits. Bob Carpenter, Division of Building Inspection, answered that, to the best of his knowledge, there had been no complaints filed with his office about that property; and their enforcement is typically complaint-driven. He noted that tenants do sometimes move into existing buildings without obtaining a certificate of occupancy. Mr. Owens asked Mr. Carpenter to look into the situation. Ms. Wade added that, if the staff re-dockets that zoning development plan, the onus will still be on the property owner to have that plan certified thereafter.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, noting that no physical changes are proposed to the property with this plan. He said that, since it is a Final Development Plan, the Planning Commission will not have another opportunity to review it.

Mr. Taylor stated that the existing structure is 7,200 square feet in size, with a covered breezeway separating the two portions of the building. There are two existing access points: one to Alexandria Drive, and one to Devonport Drive. The parking requirement for the proposed B-1 zoning is 18 spaces, and the petitioner is proposing 25 spaces. Mr. Taylor noted that Wolf Run Creek runs along the rear of the subject property, and that the entire property is located within a FEMA floodplain.

Mr. Taylor said that the Subdivision Committee recommended approval of this plan. Following the Subdivision Committee meeting, the petitioner submitted a revised plan in order to meet some of the conditions for approval. The revised submittal met conditions #10, #12, and #13. With regard to condition #14, Mr. Taylor stated that a portion of the parking for the site was depicted in the right-of-way, so the staff added this condition in order to have that area be reclaimed for landscaping. The revised plan depicts landscaping areas along the portion of the property that fronts onto Devonport Drive.

Mr. Taylor stated that, after reviewing the revisions to the petitioner's original plan, the staff drafted a revised recommendation, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection.
10. ~~Delete notes #14 & 15.~~

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10. 11. Pedestrian Planner's approval of parking lot crosswalks.
- ~~12. Correct pavement limits near existing dumpster.~~
- ~~13. Denote location of trees to be planted to meet tree canopy requirements.~~
11. 14. Discuss Identify plantings in landscape areas along Devonport Drive.

Mr. Taylor noted that the new condition #11 should address the issue of the landscaping area needed along the frontage of Devonport Drive. He said that, should the Planning Commission choose to approve the proposed conditional zoning restrictions, they would need to add a new 12th condition as well, referencing those restrictions.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He said that the petitioner is in agreement with the staff's recommendations on the requested zone change and development plan.

Mr. Murphy stated that, given the large concentration of high-density residential uses located around the subject property, and the walkability of the neighborhood, the petitioner believes that the subject property can contribute positively to the area, should this request be approved. He noted, with regard to the development plan, that the amount of impervious surface on the subject property will actually be reduced slightly once the pavement is removed to install the additional landscaping along Devonport Drive.

Mr. Murphy said that he was made aware of the staff's proposed conditional zoning restriction limiting the signage on the property just prior to this meeting, but that he had since discussed it with the petitioner and he believed that it was appropriate for this location.

Commission Questions: Mr. Owens asked Mr. Murphy if the petitioner also owns the property directly across Alexandria Drive that was previously discussed. Mr. Murphy responded that the petitioner does not own that property.

Division of Building Inspection Comments: Mr. Carpenter stated, for clarification, that the Division of Building Inspection had received several complaints about itinerant merchants located on the property across Alexandria Drive, but had not received any complaints about the occupants of that building.

Citizen Comment: There were no citizens present to discuss this zone change.

Zoning Action: A motion was made by Mr. Holmes, seconded by Mr. Paulsen, and carried 8-0 (Beatty, Richardson, and Roche-Phillips absent) to approve MAR 2011-4, for the reasons provided by staff, and adding the conditional zoning restrictions as proposed by staff in the revised recommendation.

Development Plan Action: A motion was made by Mr. Holmes, seconded by Mr. Paulsen, and carried 8-0 (Beatty, Richardson, and Roche-Phillips absent) to approve ZDP 2011-13, subject to the 11 conditions as listed in the revised staff recommendation, and adding a new condition #12 to note the conditional zoning restrictions.

3. SCW NEWTOWN, LLC, ZONING MAP AMENDMENT & A-1 SANITATION SERVICE, INC. & EDSTER PROPERTY ZONING DEVELOPMENT PLAN

- a. MAR 2011-1: SCW NEWTOWN, LLC (2/27/11)* - petition for a zone map amendment from a Highway Service Business (B-3) zone to a Wholesale & Warehouse Business (B-4) zone, for 1.083 net and gross acres, for property located at 763 & 779 Newtown Pike (portions of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 2) recommends Retail, Trade and Personal Services (RT) land use for the subject property. The property is also located within the Central Sector Small Area Plan boundary. The petitioner proposes to rezone the property in order to construct warehouses and shops of special trade, and associated off-street parking.

The Zoning Committee did not make a recommendation, due to the lack of a quorum at their January 6, 2011, meeting.

The Staff Recommended: **Approval**, for the following reasons:

1. The existing Highway Service Business (B-3) zone is inappropriate for the rear portion of the subject property because it is set back 200 feet from the public right-of-way with inadequate visibility and poor vehicular access, at present. These assets are typically necessary for a retail, trade or personal service business to succeed, as is recommended by the 2007 Comprehensive Plan.
2. The proposed Wholesale and Warehouse Business (B-4) zone is appropriate for the subject property because the proposed warehouse use is less intense than what could be developed on the property, with no Planning Commission review, in close proximity to an existing elementary school and mobile home park. In this case, a limited B-4 zone is an appropriate transition between the commercial Newtown Pike corridor and the public park, elementary school and community swimming pool.

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3. The proposed redevelopment is consistent with the Central Sector Small Area Plan, which was recently adopted by the Planning Commission, in that neighborhood economic development is proposed that can spur further investment in the neighborhood. It also still allows for a retail, personal service or restaurant use to occupy the front portion of the subject property along Newtown Pike, thereby further supporting the neighborhood.
4. This recommendation is made subject to the approval and certification of ZDP 2011-3: A-1 Sanitation Service, Inc. & Edster Property, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
5. Under the provisions of Article 6-7 of the Zoning Ordinance, this property shall be subject to the following use and buffering restrictions via conditional zoning:
PROHIBITED USES:
 - a. Ice Plants.
 - b. Tire re-treading and re-capping.
 - c. Sales of feed and grain or other agricultural supplies (except for offices for such sales).
 - d. Establishments and lots for display, rental, repair or sale of farm equipment, automobiles, trucks, mobile homes, recreational vehicles, motorcycles or boats.
 - e. Truck terminals and freight yards.
 - f. Automobile service stations.
 - g. Establishments for the display and sale of pre-cut, pre-fabricated, or shell homes.
 - h. Circuses and carnivals.
 - i. Pawn shops.
 - j. Mining.
 - k. Kennels and animal hospitals.
 - l. Major and minor automobile and truck repair, except for vehicles used accessory to the business.
 - m. Parking lots and structures as principal uses.

LANDSCAPE & BUFFERING RESTRICTIONS:

- a. A 50-foot building setback shall be established from any mobile home (at their present locations; excluding any porches, stairs or attached accessory structures) located within the mobile home park to the north of the subject property.
- b. A 5-foot land use buffer area shall be provided along the property line adjoining the park and school (A-U zone), and a 10-foot land use buffer area shall be provided along the property lines adjoining the mobile home park (B-3 zone). Existing trees (except for diseased and damaged ones) shall be preserved in these buffer areas.
- c. A 6-foot tall privacy fence shall be provided along all property lines adjoining the park, school or mobile home park. A 3-foot tall hedge shall be provided along the property line adjoining the park and school (A-U zone).
- d. There shall be no outside loudspeakers.
- e. There shall be no overhead doors within 100 feet of any mobile home (at their present locations; excluding any porches, stairs or attached accessory structures).
- f. Exterior lighting shall be designed to prevent light shining directly from the source to the adjoining mobile home park to the north.

These use and buffer restrictions are appropriate and necessary at this location to ensure that the proposed commercial development of the rear portion of the subject property will not negatively impact either the existing residential uses in this area or the established public uses on the adjoining property.

- b. ZDP 2011-3: A-1 SANITATION SERVICE, INC. & EDSTER PROPERTY (2/27/11)* - located at 763 & 779 Newtown Pike.

(J.E. Black)

Note: The Planning Commission postponed this plan at its January 27, 2011, meeting.

The Subdivision Committee Recommended: Postponement. There were questions regarding the buffering and the proximity of overhead doors to nearby mobile homes.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote proposed detention area.
7. Denote construction access location.

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8. Clarify proposed pedestrian access to Newtown Pike.
9. Denote: No development of B-3 area until a final development plan is approved by the Planning Commission.
10. Addition of existing and proposed utility easements.
11. Discuss the landscaping and tree preservation adjacent to park boundary.
12. Discuss the landscape screening adjacent to the mobile home park.
13. Denote no access to Earl Court.
14. Discuss the compact parking proposed on the east side of Building A.
15. Discuss the gravel area west of Building A.
16. Discuss the proposed Building B overhead doors adjacent to the mobile home park.
17. Discuss the plan status.

Zoning Presentation: Ms. Wade presented the staff's zoning report, noting that each Commission member had also received a copy of the staff's revised conditional zoning restriction recommendation and a copy of the B-4 zone regulations from the Zoning Ordinance. She stated that, although the subject property has a Newtown Pike address, it does not actually have any frontage to Newtown Pike or any other roadway. It is a remnant tract that was formerly the homestead for the Edster Property and the rear portion of the property of 763 Newtown Pike. This would result in the front portion of 763 Newtown Pike remaining a B-3 zone. Other zoning in the vicinity of the subject property includes B-3, B-1 and M-1P zoning to the north, which includes the mobile home park; I-1 zoning; Douglass Park, an elementary school, and a public pool to the west (A-U zoning); and B-3 and B-4 zoning to the south. The Lexmark campus is located directly across Newtown Pike from the subject property, and the Eastern State Hospital property is located a short distance to the south.

Ms. Wade stated that the petitioner is proposing to rezone the subject property in order to develop small warehouses and shops of special trade. Shops of special trade generally include contractors, plumbers, electricians, and painters, etc., and can be used to store their materials and provide an office space. The B-4 zone also permits auto and truck repair, as well as several other such uses. The petitioner is proposing to construct two buildings, totaling 19,000 square feet in size. Ms. Wade displayed several aerial and street-level photographs of the subject property and the surrounding area.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Retail Trade and Personal Services land use for the subject property, which includes retail sales of goods, preparation of food and drink, and some personal services. That recommendation reflects the existing B-3 zone on the property. Ms. Wade noted that the subject property is also located within Sub-area A of the Central Sector Small Area Plan, which was adopted by the Planning Commission in 2009. There were three concerns identified by the Plan for this Sub-area: 1) the image of the mobile home park; 2) the need to provide pedestrian and vehicular connections across Newtown Pike to the rest of the north side; and 3) access for this area to retail and other services. The Central Sector Plan has Guiding Principles and Goals and Objectives, in addition to those included in the Comprehensive Plan. One of the Guiding Principles that closely relates to the subject property is promoting and preparing for redevelopment and investment in the area. One of the Goals and Objectives of that Plan, considered by the staff to be particularly relevant, was related to utilizing assets of the neighborhood as an economic development approach. The subject property now has the opportunity to be re-used, and it could spur investment for the neighborhood, while still allowing for the provision of more retail and neighborhood services along the frontage of Newtown Pike.

Ms. Wade stated that the staff agreed with the petitioner's contention that the proposed B-4 zoning was more appropriate at this location than the existing B-3 zoning, because the subject parcel is set back from Newtown Pike and does not have the visibility that is typically necessary for a retail or service use. She added that the staff also believes that rezoning the subject property to B-4 would support the Infill & Redevelopment Area goals, which encourage commercial infill development on vacant land; and that the proposed B-4 zone would be less intense than the permitted B-3 uses, and thus more appropriate given the property's adjacency to a school and mobile home park.

Ms. Wade stated that the staff is recommending conditional zoning restrictions as part of their consideration of this request, due to the close proximity of the subject property to a school, park, and mobile home park. The staff met with the petitioner one week prior to this hearing, because the petitioner was not in agreement with some of the proposed conditional zoning restrictions. Based on the discussion at that meeting, the staff drafted another set of proposed conditional zoning restrictions, with which the petitioner is also not in full agreement.

Ms. Wade displayed a diagram of the subject property, depicting the area about which the staff and the petitioner do not agree. She said that some of the proposed conditional zoning restrictions refer to a distance from the existing mobile homes. The staff originally suggested a setback of 50' from any residential use for one of the proposed buildings, and 100' for any overhead doors. Ms. Wade referred to the B-4 portion of the Zoning Ordinance, noting that, if the mobile home park had been in a residential zone, the petitioner would have been required to keep all overhead doors at least 100' from the residential zone line. In this case, however, the mobile home park is zoned B-3, so that provision is not applicable. As a compromise, the staff proposed a setback of 75' for overhead doors from the nearest mobile home itself, not the zone boundary. Ms. Wade displayed a close-up view of the rendered

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development plan on the overhead projector, and noted the locations where the petitioner has proposed to construct a building with overhead doors. The petitioner has indicated that they would like to divide that proposed building into three equal units, so one of the doors would need to be moved to meet that setback requirement. Ms. Wade said that the second issue about which the petitioner and the staff are not in agreement is the proposed 75' setback of any auto or truck repair use from the existing residential area. The staff initially suggested prohibiting that use, but the petitioner indicated that they have a prospective client that would require that use. The staff believes that the proposed 75' setback for overhead doors from the mobile home park is reasonable, and would allow the petitioner over 80% of their site for that use. Ms. Wade stated that the third issue of contention is the need for landscape buffering along the property boundary that is shared with the school. The staff initially recommended a 10' landscape buffer along the boundary shared with the school. The petitioner is concerned about an area of proposed pavement that lies within the area recommended by the staff for a landscape buffer. One possible solution to these issues would involve reconfiguring the proposed commercial units, moving the overhead door unit further south, and changing the unit configuration to meet the requirement that all overhead doors be located more than 75' from the property boundary.

Ms. Wade stated that the staff is recommending approval of this request, subject to the conditional zoning restrictions as proposed.

Note: Mr. Paulsen left the meeting at this time.

Commission Questions: Mr. Wilson asked Ms. Wade to clarify the areas of disagreement again. She answered that the major areas of disagreement are the proposed 10' landscape buffer and 75' distance from overhead doors.

Mr. Wilson asked if the staff had received any feedback from any of the nearby residents or neighborhood associations. Ms. Wade responded that the staff had not received any feedback. She noted that the owner, rather than the residents, of the mobile home park would have received notice of the proposed rezoning.

Ms. Copeland asked if the trailers in the mobile home park were on wheels. Ms. Wade answered that she was unsure, since they were skirted. Ms. Copeland asked when the trailer park was constructed. Mr. King answered that this park was zoned during the comprehensive rezoning of 1969, and that the mobile homes were located in that area long before that time. Ms. Copeland stated that it appeared that the three that were located closest to the subject property constitute a hardship for the property owner, and she would like to know how long they had been in that space. Mr. King responded that he did not believe those three had been placed there within the past few years.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, further orienting the Commission to the location of the subject property. He noted that the property has access via Earl Court, which also serves the trailer park to some extent. There is a large Columbia Gas easement located in the northwest corner of the property. The petitioner proposes to add an access point to Newtown Pike and 39 parking spaces to the property. In addition, the petitioner is proposing to construct two buildings: one is proposed to be 10,000 square feet in size, with five units; the other building is proposed to be 8,400 square feet in size, with three units. Mr. Martin noted the proposed location of the dumpsters, as well as the former location of the Edster home in an area that is heavily treed. He noted, with regard to Ms. Copeland's questions about how long the three nearest trailers had been in place, that he had reviewed a plat from more than two years ago, and the trailers were included on it.

Mr. Martin stated that the Subdivision Committee originally recommended postponement of this plan, due to concerns about buffering along the trailer park and park boundaries, as well as the location of the proposed overhead doors. After several discussions with the petitioner, the staff prepared the following revised recommendation:

The Staff Recommends: **Approval**, subject to the following requirements:

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote proposed detention area.
7. Denote construction access location.
8. Clarify proposed pedestrian access to Newtown Pike.
9. Denote: No development of B-3 area until a final development plan is approved by the Planning Commission.
10. Addition of existing and proposed utility easements.
11. ~~Discuss~~ Denote the landscaping ~~and tree preservation~~ adjacent to park boundary.
12. ~~Discuss~~ Denote the landscape screening adjacent to the mobile home park.
13. Denote no access to Earl Court.

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14. Discuss Resolve the compact parking layout proposed on the east side of Building A at time of the Final Development Plan.
15. Discuss Resolve the proposed use of the gravel area west of Building A at time of the Final Development Plan.
16. Discuss the proposed Revise Building B overhead doors adjacent to the mobile home park to comply with conditional zoning restriction.
17. Discuss Change the plan status to a Preliminary Development Plan.
18. Adjust building A to remove conflict with required 25' rear yard setback or denote need for dimensional variance.
19. Addition of conditional zoning.

With regard to the conditions for approval, Mr. Martin said that the first few conditions were standard clean-up items. There was some discussion about condition #8; the staff and Committee members were concerned about the provision of adequate pedestrian facilities to the commercial area and Newtown Pike at the front of the property. With regard to condition #11, Mr. Martin said that the staff was concerned about the appropriate level of landscaping along the boundary with the park. The area is heavily treed, and a privacy fence is in place along much of that boundary. The staff also felt it was important to denote that the landscape buffer needs to be enhanced along the boundary of the mobile home park, which was reflected in condition #12. The staff recommended condition #13 to restrict access to Earl Court, since it is a substandard street. With regard to condition #14, Mr. Martin stated that there was a lengthy discussion at both the Technical and Subdivision Committee meetings regarding the staff's concerns about the proposed parking layout. There are four compact parking spaces proposed in the same area as an overhead door, which could be difficult to utilize properly. The staff also recommended a condition to resolve the use of the gravel area west of Building A, in order to clarify that it cannot be used for outdoor storage in the requested B-4 zone, since they were concerned that the awkward configuration of the area might lend itself to such a use. There is also a slight encroachment into the 25' required rear yard setback on the property, so the staff added condition #18 to address that situation. The staff also added condition #16 in order to require that the petitioner comply with the conditional zoning restrictions with regard to overhead doors. With regard to condition #17, Mr. Martin stated that the staff had received an email from the petitioner, indicating that they did wish to change the status of this plan to a preliminary development plan. The staff is comfortable that all these issues can be resolved at the time of a final development plan, so they are recommending approval of this plan.

Commission Questions: Mr. Owens asked Mr. Martin to clarify, with regard to the rendered development plan, if all of the shaded gray areas are proposed to be asphalt. Mr. Martin responded that that was correct. Mr. Owens stated that it appeared that the proposed development would consist of two buildings and a great deal of asphalt. He asked, with regard to the storm water report, if there is an existing stormwater basin on the subject property, and, if so, where it is located. Mr. Martin responded that, to the best of his knowledge, there is no existing detention basin on the property. He said that there was some discussion about whether some part of the subject property would be an appropriate location for a detention basin. He added that the petitioner would have to address that situation prior to certification of a final development plan for the property, since Article 21 requires that at least a conceptual stormwater management solution must be included on a preliminary development plan.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She stated that their primary company (which began in 1974 and was the first mini-warehouse company in Lexington) operates a chain of mini-warehouse storage facilities. The company, In addition, they own and operate several rental properties throughout Fayette County. The petitioner is not proposing to construct mini-warehouses at this location; rather, they are proposing to develop shops of special trade for plumbers, upholsterers, auto mechanics, etc. The petitioner currently operates a similar facility in Lexington on Gold Rush Court. This market is underserved with regard to providing operating spaces for small companies that are too large to be home businesses, but do not require a large facility.

Ms. Wiseman stated that the petitioner appreciates the time that the staff has spent working with them to reach an agreement with regard to the proposed conditional zoning restrictions for the subject property. They are in agreement with all of the conditions for approval of the development plan, except for #16 which refers to the placement of overhead doors. Ms. Wiseman said that the subject property is in a very complicated zoning area, with many different zones and types of uses adjacent to the property. That variety of uses and zones, combined with the awkwardness of the site itself and the proposed conditional zoning restrictions, could create a hindrance for the types of uses that the petitioner would like to have located on the subject property.

Ms. Wiseman displayed a rendered copy of the development plan on the overhead projector, noting the petitioner's preferred location for the overhead doors. She said that the petitioner would like to divide proposed Building B so that two tenants each had a unit with one overhead door, and one tenant would have a unit with two overhead doors. These units would typically be rented by tenants who use box or panel trucks, not tractor-trailers, and all of the business would be conducted indoors.

Ms. Wiseman stated that the petitioner does not object to the staff's proposed conditional zoning restriction that would require a 5' landscape buffer along the property line adjoining the park and the school, and a 10' buffer along the property lines adjoining the mobile home park. The petitioner's primary objection is to the proposed restriction

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that would require that any overhead doors be located at least 75' from any mobile home, which would prevent the division of one of the structures into three units, each with an overhead door. The petitioner also objects to the proposed restriction on major or minor auto and truck repair within 75' feet of a mobile home, which could prevent such a use from locating on the property. Ms. Wiseman stated that the subject property will be very well screened visually from the mobile home park, since there will be a 6' privacy fence along the entire property boundary, as well as a grade change. In order to buffer the mobile home park from noise on the subject property, the petitioner is suggesting a required distance of 60', rather than 75', between the proposed overhead doors and any mobile homes, and a 5' landscape buffer along the entire driveway to the subject property. That could allow them to maximize the rental space in the structures, while providing a more effective noise buffer to the adjoining residential units than the staff's proposed 75' setback.

Ms. Wiseman said that the mobile home park, which is zoned B-3, might not be located on the adjoining property forever. That would open up that property for B-3 development, in which case the proposed conditional zoning restrictions would no longer be necessary. The front portion of the subject property is recommended for Retail Trade land use by the 2007 Comprehensive Plan.

Ms. Wiseman stated that the petitioner could reconfigure the proposed structure, but they contend that they will lose at least one rental unit if they do so. She said that, if the staff's main concern is how the mobile home park residents will be affected by noise from the subject property, that all of the activity on the property will be kept inside the buildings. There will be light truck traffic to the property in the mornings and afternoons, but only intermittent activity otherwise. Ms. Wiseman reiterated that the petitioner contends that their proposal of a 60' for overhead doors from the mobile home park, along with a 5' landscape buffer planted with trees along the driveway, would be a much more effective means of buffering for those residential units. Ms. Wiseman distributed a proposal for conditional zoning restrictions to which they were agreeable.

Commission Questions: Mr. Owens asked Ms. Wiseman to explain how stormwater will be managed on the subject property, since the development plan depicts a large amount of building coverage and asphalt. Ms. Wiseman answered that the petitioner would be required to include stormwater management facilities on the final development plan for the property.

James Black, engineer, stated that there are two sections of the subject property: the largest portion is almost entirely covered with gravel, and has been used for parking trucks; the smaller portion used to contain a single-family residence, which has been removed. The northern portion of the property is approximately four feet lower than the southern portion, which creates a natural watershed. Mr. Black stated that the Edster homestead portion of the property typically drains to the mobile home park, which has substandard drainage. He said that the proposed development plan would leave most of that portion of the property undeveloped, so that it does not create additional drainage problems. There are some drainage features in place on the larger portion of the property, including a 1' square drop inlet, but there is no existing detention basin or other substantive stormwater management feature. Mr. Black noted, however, that there is a sizeable storm sewer along Newtown Pike to the north, which has been used in the development of other projects. The current proposal for the subject property is to route all of the roof water from the two new buildings, as well as the drainage from the new asphalt, to that existing storm sewer system. Since most of that portion of the property is covered in hard-packed gravel, the additional runoff should be minimal. Mr. Black said that the petitioner is proposing to construct a detention basin along the property line with the Scott-Gross facility, at such time as the front B-3 zoned portion of the property is proposed for development. He added that that basin would be included on the final development plan for the property.

Mr. Owens stated that he had been on the subject property, and had seen the amount of gravel that is currently there. He said that he is concerned that the gravel is so solidly packed that the ground on the bulk of the property cannot absorb water at all, and that any development on the property will create a great deal of additional runoff for the mobile home park. He believes that the petitioner should be required to submit a full stormwater plan prior to approval of a final development plan for this property. Mr. Black answered that the former homestead property currently has less runoff than when the house was still standing, and that the petitioner does not propose any construction on that part of the property. One corner of one of the proposed buildings does extend into that portion of the property, but runoff could be effectively directed to Newtown Pike by use of gutters and downspouts. Since the petitioner is proposing to develop only one portion of the property, they would prefer to install inlets in the parking area, and construct only one detention basin to serve the entire property. Mr. Black noted that it should not be difficult to manage runoff for the subject property. Mr. Owens said that he would prefer to have a stormwater management solution included on this plan. Mr. Cravens noted that conditions #2 and #6 will require that detention should be included on the development plan. Mr. Owens stated that that was fine, he just wanted to make sure that it was included at the time of the final development plan.

Mr. Holmes asked if the petitioner could construct a smaller building, or shift the location of the proposed overhead door that would be too close to the mobile home park. Ms. Wiseman answered that the petitioner could do so, but they would lose developable area and, consequently, paying tenants. She added that the petitioner does not believe

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that that is a reasonable request, since they would lose a portion of the larger of the two proposed buildings. There are several other constraints on the property, given the requirements for buffering, the large utility easement, the relatively narrow width of the property, etc., which could hamper their efforts to develop the proposed buildings profitably.

Petitioner Comments: Robo Sutherland, petitioner, stated that reconfiguring the building as proposed by the staff would result in the overhead door being 76 feet away, but that distance would not buffer noise as effectively as planting trees would.

Commission Questions: Ms. Copeland stated that she had concerns about the proposed use of Serviceberry trees for buffering on the subject property as proposed in the applicant's restrictions. Mr. Sutherland stated that the petitioner had used Serviceberry trees at another of their locations, and they worked very well around asphalt areas, but he added that he would be agreeable to using some other type of trees. Ms. Copeland said that she did not believe that Serviceberry was a hardy enough species to use around large trucks.

Staff Rebuttal: Ms. Wade stated that the staff believed that 75' would be the minimum distance to provide an effective buffer for the mobile home park. At the petitioner's proposed distance of 60', the conditional zoning restrictions would have very little effect on the property. Ms. Wade said that, if the Planning Commission chooses to reduce the distance to 60', they should consider removing that restriction completely, as it would not be effective.

With regard to Ms. Copeland's concerns about tree species, Ms. Wade said that the staff would agree that it is not appropriate to specify tree species at this point. That issue should be addressed at the final development plan stage. The staff believes that the most important characteristic of the species chosen is the provision of a dense noise buffer. Should the Planning Commission choose to reduce or eliminate the proposed 75' noise buffer, the staff would suggest adding a restriction to require that no buildings could be constructed closer than 10' to the property line that adjoins the mobile home park.

Commission Questions: Mr. Holmes asked if the proposed restriction to prohibit any buildings within 10' of the property line is intended to act as a buffer for the mobile home park should the Commission choose to eliminate the staff's suggested 75' buffer. Ms. Wade answered that that was correct. Some buffering would still be provided for the mobile home park, but overhead doors would be allowed much closer to the property line. Mr. Holmes said that he believed that the 75' buffer was appropriate, but it did not appear that the petitioner was willing to reduce the size of the proposed building in order to provide that buffer. Ms. Wade said that the mobile home park has existed in its current location for at least 40 years, and there has been no indication to the staff that it would be removed or redeveloped anytime in the near future. The staff's concern was to mitigate the petitioner's new, proposed development in order to have as little impact as possible on an existing residential development.

Mr. Cravens asked how the staff arrived at the proposed 75' buffer. Ms. Wade answered that, if the requested B-4 zone was adjacent to a residential zone, a 100' buffer from any overhead doors would be required. Mr. Cravens asked if there was a legal basis for that proposed conditional zoning restriction, given that the mobile home park is not zoned for residential use. Ms. Wade answered that the same legal basis that applies to a residential zone also applies to a residential use. She said that the concerns are noise, light, and visual buffering for the residents from any commercial activity on the subject property. Mr. Cravens asked if the 75' would be measured from the actual mobile homes, rather than the property line. Ms. Wade responded that that it would, and that it was intended to give the petitioner a bit of leeway in the location of their building.

Mr. Brewer asked, with regard to the displayed development plan, what was represented by the small squares near the corner of the plan. Ms. Wade answered that those squares indicated the proposed location of the dumpsters on the property. Mr. Brewer asked if the dumpster location could be moved in order to accommodate the overhead door. Mr. Black responded that that was the proposed location for the dumpster as indicated by the Division of Solid Waste staff. Ms. Wade said that that was the preferred location for the dumpster, but the staff does not believe that it is the only workable location.

Applicant Rebuttal: Ms. Wiseman said, with regard to Mr. Cravens' question about the proposed 75' buffer from overhead doors, that the petitioner is not legally required to provide buffering for the mobile home park, since it is not in a residential zone. The petitioner contends that this is not the type of issue that can lawfully be restricted under the provisions for conditional zoning. Under state law, the Planning Commission has the power to impose restrictions over the petitioner's objections with regard to use, class of use, density of use, landscaping, and buffering; the petitioner contends that the location of an overhead door does not fall within any of those classes of use. Ms. Wiseman stated that the petitioner is agreeable to providing a 60' buffer from overhead doors and planting a landscape buffer, but they do not believe that the Planning Commission has the authority to regulate the location of an overhead door on a development plan. The petitioner has proposed to: provide a 60' buffer from overhead doors; provide a 10' setback from the property line; delete the reference to a specific tree species; and to prohibit major auto repair in the northernmost unit in Building "B," as labeled on the zoning development plan.

Petitioner Comments: Mr. Sutherland stated that Building "B" could be reduced to two units, but each unit would be too large to be feasible. Tenants who rent those larger units typically expect semi-trailer access, which is not possible on the subject property. The desired size of each unit in that building is 2,000 to 3,000 square feet.

Staff Comments: Ms. Wade displayed a list of the petitioner's proposed changes to the conditional zoning restrictions on the overhead projector for the Commission members, and noted that Ms. Boland could address any legal questions they might have about their proposal.

Commission Questions: Ms. Blanton read the following statement from the staff report: "...that the proposed warehouse use is less intense than what could be developed on the property with no Planning Commission review." She said that the petitioner could develop the subject property with uses that would be much more onerous to the adjacent residential property, should the Commission choose to disapprove this request. She said that she believes that the proposed changes to the conditional zoning restrictions represent a workable compromise.

Mr. Owens asked if there was a specific purpose behind the staff's proposed 75' setback for overhead doors. Ms. Wade responded that activity typically associated with overhead doors, including large vehicle traffic; the possible hours of operation; and the possible large number of trips to and from the property could generate a great deal of noise that could negatively impact the residents of the mobile home park. Mr. Owens stated that he agreed with Ms. Blanton, and he would be willing to vote to approve this request with the proposed changes to the conditional zoning restrictions.

Mr. Brewer asked if the Planning Commission has the authority to restrict the location of overhead doors via conditional zoning, and if the dumpsters could be relocated in order to move the overhead doors further from the mobile home park. Mr. Sutherland answered that the dumpster could be moved to a nearby open area, but he believed that the emptying of the dumpsters would create more noise than any activity associated with the overhead doors. He said that any other configuration of the dumpsters would result in the loss of parking spaces, or removal of trees and/or fencing.

Legal Comments: Ms. Boland stated that the staff's interpretation with regard to conditional zoning restrictions was appropriate. She said that, just as a drive-through window is considered a use, so should an overhead door be considered. Location of those doors, therefore, could be subject to use restrictions. Ms. Boland noted that the interpretation of that law could be debated by the courts, and could be resolved in a number of ways.

Petitioner Comments: Ms. Wiseman stated that drive-throughs are listed as principal, conditional, or accessory uses in the Zoning Ordinance, while overhead doors are considered a special provision. Ms. Boland stated that, in that case, the law could be interpreted to prohibit any use that might involve overhead doors. She said that she believed that it was less restrictive to try to control the location of overhead doors, rather than limit the use of them completely.

Commission Comments: Ms. Copeland said that she did not believe that it would be appropriate to prohibit auto and truck repair on the entire property, since the petitioner had agreed to prohibit it in the unit nearest the mobile home park.

Mr. Wilson said that, in the future, he would like for these types of issues to be negotiated prior to the public hearing. He said that he would prefer to keep the staff's recommendation of a 75' setback for any overhead doors.

Ms. Copeland stated that several of the Commission members were willing to delete that proposed setback, since the petitioner was willing to prohibit auto and truck repair in the northernmost bay of the building nearest the mobile home park, which should help to mitigate the noise near the residences. Mr. Wilson said that, based on Ms. Copeland's comments, he would be more comfortable with eliminating the 75' overhead door setback.

Zoning Action: A motion was made by Ms. Copeland, seconded by Ms. Blanton, and carried 8-0 to approve MAR 2011-1, for the reasons provided by staff, subject to the following conditional zoning restrictions:

5. Under the provisions of Article 6-7 of the Zoning Ordinance, this property shall be subject to the following use and buffering restrictions via conditional zoning:

PROHIBITED USES:

- a. Ice Plants.
- b. Tire re-treading and re-capping.
- c. Outdoor storage of equipment and outdoor uses associated with the sale of feed and grain or other agricultural supplies.
- d. Outdoor storage and display of equipment and inventory associated with establishments and lots for rental, repair or sale of farm equipment, automobiles, trucks, mobile homes, recreational vehicles, motorcycles or boats.

- e. Truck terminals and freight yards.
- f. Automobile service stations.
- g. Establishments for the display and sale of pre-cut, pre-fabricated, or shell homes.
- h. Circuses and carnivals.
- i. Pawn shops.
- j. Mining.
- k. Kennels and animal hospitals.
- l. The northernmost unit of Building B shall not have major or minor automobile and truck repair.
- m. Parking lots and structures as principal uses.

LANDSCAPE & BUFFERING RESTRICTIONS

- a. A 50-foot building setback shall be established from any mobile home (at their present locations; excluding any porches, stairs or attached accessory structures) located within the mobile home park to the north of the subject property. No building shall be located closer than 10 feet to the property lines adjoining the mobile home park.
- b. A 5-foot land use buffer area shall be provided along the property line adjoining the park and school (A-U zone), and a 10-foot land use buffer area shall be provided along the property lines adjoining the mobile home park (B-3) zone except that a 5-foot landscape buffer shall be provided along the southern boundary of the mobile home park for a distance of 10 feet where it adjoins the proposed B-4 zone. Existing trees (except for diseased and damaged ones) shall be preserved in these buffer areas, and new trees shall be planted in the 5-foot buffer area 20' on center along the entrance drive aisle out to Newtown Pike, including the area to remain B-3.
- c. A 6-foot tall privacy fence shall be provided along all property lines adjoining the park, school or mobile home park.
- d. There shall be no outside loudspeakers.
- e. Exterior lighting shall be designed to prevent light shining directly from the source to the adjoining mobile home park to the north.

These use and buffer restrictions are appropriate and necessary at this location to ensure that the proposed commercial development of the rear portion of the subject property will not negatively impact either the existing residential uses in this area or the established public uses on the adjoining property.

Development Plan Action: A motion was made by Ms. Copeland, seconded by Ms. Blanton, and carried 8-0 to approve ZDP 2011-3, subject to the first 15 conditions as listed in the following revised recommendation; deleting #16; adding a new condition to denote that the tree species along the entry drive shall be determined at the time of the final development plan; and adding a new condition to denote the need for a detention basin at the time of the final development plan.

VI. COMMISSION ITEMS

- A. PFR 2011-3: U.S. DEPARTMENT OF VETERANS AFFAIRS (LEESTOWN DIVISION)** – a Public Facility Review of the placement and use of an E85 (ethanol) fueling station on the Medical Center property, located at 2250 Leestown Road.

Ms. Rackers presented the Staff Report on this Public Facility Review, briefly orienting the Commission to the location of the V.A. Medical Center property on Leestown Road near its interchange with New Circle Road. She stated that the property is zoned A-U, and it is surrounded by mostly industrial zoning, with the exception of some A-U and P-1 zoned properties in the area.

Ms. Rackers said that the purpose of this Public Facility Review is to review the proposal by the federal government to add an E85 fueling station on the rear of the Medical Center property. E85 is a biofuel, that is an 85/15 percent mix of ethanol and gasoline. It is made by distilling and fermenting the starch from corn, barley, or sugar cane; in the United States, it is produced mainly from corn, in facilities located in the Upper Midwest. There are relatively few E85 facilities in this portion of the country, compared to the number in the Midwest and because of the relative scarcity of such facilities in this part of the country, the VA's flex fuel vehicles, including vans, busses, trucks, and cars, are largely underutilized.

With regard to the Medical Center property, Ms. Rackers stated that it contains 135 acres, with over 681,000 square feet of buildings. She noted that not all of the buildings on the property are used for patient care; many are used for storage, utilities, or administrative functions, and some of the buildings are currently vacant. The VA is proposing to construct a 225 square-foot concrete pad, with a 5,000 gallon above-ground fuel tank with a protective canopy, in the existing fueling area on the property. The petitioner also proposes some road improvements on the interior of the property to provide for better access to the fueling station.

Ms. Rackers stated that the 2007 Comprehensive Plan recommends Other Public Uses, which are generally large, service-oriented facilities, for the subject property. Should the subject property ever be redeveloped, the Plan recommends a combination of High Density Residential, Neighborhood Commercial, and Professional Services uses for the property. Ms. Rackers said that there are no Goals or Objectives in the 2007 Comprehensive Plan that are in opposition to this request. She noted that Goal 17,

* - Denotes date by which Commission must either approve or disapprove request.

Objective B, is particularly applicable to request: "Protect and enhance the overall quality of the stream and river corridors and aquifer recharge areas in both urban and rural areas." That Objective dictates the use of Best Management Practices in determining the best location for the proposed fuel tank, and monitoring its use, since Town Branch Creek and an associated FEMA Flood Hazard Area run near the rear of the subject property, just on the other side of the rail line. Ms. Rackers noted that a small offshoot of the creek comes into the subject property near the proposed location for the fuel tank. She said that several chapters of the Comprehensive Plan, as well as Goals and Objectives, all support this request.

The VA Medical Center in Lexington has a service area of Central, Eastern, and Southeastern Kentucky. It offers many different services for veterans and employees, including transportation to and from the facility. Each VA Medical Center typically provides its own fueling station. Ms. Rackers said that the "Purpose and Need" section of the Environmental Assessment that was provided to the staff indicates that, in response to federal initiatives, the VA is looking for and considering ways to reduce their carbon footprint. One means of accomplishing that is to reduce petroleum consumption by two percent per year through fiscal year 2020, and increase the use of biofuels. Several years ago, the Veterans Health Administration began to require that alternative fuel be made available to VA Medical Centers. Due to the current budget deficit, the VA commissioned a study to determine the most useful locations for biofuel stations. That study identified 92 sites in 44 states, with the Leestown Road VA facility included in that list of sites. As required by the National Environmental Policy Act, an environmental assessment was provided for each proposed site. The assessment for the Leestown Road facility noted that, because there is a spill prevention/containment plan in place for this facility, there should be no adverse impact to the property or to the groundwater, surface water, or geology of the area. Within six months of the placement of the biofuel tank, the environmental assessment will need to be updated, and it will be required to meet all federal, state, and local regulations.

Ms. Rackers stated that one of the basic themes of the 2007 Comprehensive Plan is environmental stewardship. Air quality attainment is an element of environmental protection. In 1990, Fayette and Scott Counties were designated by the EPA as a non-attainment district for air pollution, including particulate matter. Since that time, efforts have been made by the University of Kentucky, Fayette County Public Schools, and the Urban County Government to reach attainment standards, including the use of biofuels in fleet vehicles. Construction of the proposed biofuel facility supports Goal 19, Objective E, which is to comply with the Clean Air Act of 1990, and fits the pattern of projects/activities being done by the other major users of fleet vehicles in Fayette County. The Community Facilities chapter of the Plan designates the VA Medical Center as one of the major health facilities in Fayette County. Although the proposed construction does not involve an increase in the number of patient beds, or other new construction that would be similar in nature, it should be seen as an equally important update to the property.

Ms. Rackers said that, for those reasons, the staff finds this request to be in compliance with the Goals, Objectives, and text of the 2007 Comprehensive Plan. The staff is requesting that the VA obtain all necessary permits prior to locating the E85 tank on the property. Ms. Rackers said that the VA had attempted to obtain the necessary permits from the Division of Building Inspection, but they were informed that Building Inspection does not issue permits for federal agencies.

Commission Questions: Mr. Holmes asked if the VA would need to obtain a permit from the state Division of Water. Ms. Rackers answered that such a permit might be necessary, since there is a floodplain area near the rear of the property.

Mr. Owens asked why the staff was recommending that the applicant obtain a permit from Building Inspection, since Building Inspection has indicated that they would not issue a permit. Ms. Rackers responded that the staff asked that the applicant at least request a permit, so that the Division of Building Inspection would be aware of the placement of the E85 tank on the property.

Mr. Brewer asked if it was correct that the VA had hired consultants to assess the possible locations for E85 fuel tanks, and had recommended sites in 44 states. Mike Young, chief engineer for the VA, noted that they have a filtration plan and permitting program in place, since they already have above-ground fuel tanks on the Leestown Road property. Mr. Young said that he was not aware of the process behind the decision to locate an E85 station on the subject property.

Ms. Copeland asked if the subject property is completely open to the public 24 hours a day. Mr. Young answered that the subject property is a public facility; but access is controlled, and the campus is surrounded by perimeter fencing. Ms. Copeland asked how close the proposed E85 tank would be to the existing perimeter fence. She said that she is concerned that someone might try to tamper with the tank if it is too close to the fence. Mr. Young responded that the proposed location for the tank is near the railroad line and the property's boundary with the adjacent Army Reserve center. He noted that security personnel patrols and monitors the campus 24 hours a day, and that there are four existing, 10,000-gallon above-ground fuel storage tanks in that area.

Mr. Holmes asked if the VA would be required to amend their containment plan to include the new E85 tank. Mr. Young answered that there is a comprehensive plan in place for the campus, which will include the new tank. He added that the tanks are double-insulated and are built to withstand a bullet without exploding.

Action: A motion was made by Mr. Brewer, seconded by Mr. Holmes, and carried 7-0 (Beatty, Paulsen, Richardson, and Roche-Phillips absent) to approve PFR 2011-3, for the reasons provided by staff.

VI. **STAFF ITEMS** – No such items were presented.

VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **MEETING DATES FOR MARCH, 2011**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 3, 2011
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	March 3, 2011
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 10, 2011
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 17, 2011
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 24, 2011
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 30, 2011
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 30, 2011

X. **ADJOURNMENT** – There being no further business, Chair Cravens declared the meeting adjourned at 3:51 p.m.

TLW/TM/BJR/BS/src